

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

VOLODIMYR PIGIDA,

Defendant.

Case No. CR18-294-RSM

ORDER DENYING MOTION FOR A
NEW TRIAL

I. INTRODUCTION

This matter is before the Court on Defendant Volodimyr Pigida's Motion for a New Trial. Dkt. #263. Upon full consideration of the record, and for the reasons discussed herein, Mr. Pigida's Motion is DENIED.

II. BACKGROUND

On November 29, 2018, a grand jury indicted Defendant Volodimyr Pigida, with 28 counts, including conspiracy to commit mail fraud, wire fraud, and bankruptcy fraud (Count 1), wire fraud (Counts 2 through 17), mail fraud (Counts 18 through 21), bankruptcy fraud (Count 22), pre-petition concealment of property in a bankruptcy case (Count 23), false declaration in a bankruptcy case (Count 24), false oath and account in a bankruptcy case (Counts 25 and 26), and

1 falsification of records in a bankruptcy case (Count 27). The government later dismissed Count
2 12. On December 21, 2018, Mr. Pigida plead not guilty to all charges. Dkt. #21.

3 On November 14, 2022, Mr. Pigida's 11-day trial began. On December 1, 2022, the trial
4 concluded and the jury returned its verdict that same day finding Mr. Pigida guilty on all 27
5 counts. Dkt. #227.

6 Mr. Pigida now brings a Motion for New Trial. Dkt. #263.

7 **III. DISCUSSION**

9 Rule 33 of the Federal Rules of Criminal Procedure allows a defendant to move for a
10 new trial after a verdict is rendered and allows a court to "vacate any judgment and grant a new
11 trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). "A motion for a new trial is
12 addressed to the sound discretion of the trial court." *Evalt v. United States*, 382 F.2d 424, 428
13 (9th Cir. 1967). In exercising its discretion, the trial court is permitted to weigh the evidence
14 and evaluate the credibility of witnesses. *United States v. Kellington*, 217 F.3d 1084, 1097 (9th
15 Cir. 2000) (citing *United States v. Alston*, 974 F.2d 1206, 1211 (9th Cir. 1992)).

16 Mr. Pigida bases his Motion for a New Trial on four grounds. Dkt. #263. The Court
17 addresses each of these bases in turn.

18 **A. Jury Instructions**

19 First, Mr. Pigida argues that the court erred in failing to give an unanimity instruction
20 with respect to the conspiracy count because he alleges the evidence suggests there was more
21 than one conspiracy. Mr. Pigida was charged in Count 1 of the indictment with conspiring to
22 commit mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C.
23 §1343; and bankruptcy fraud, in violation of 18 U.S.C. § 157. Dkt. #1 at 1.
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1 The requirement that a jury's verdict be unanimous means more than a unanimous
2 agreement that the defendant has violated the statute in question; "there is a requirement of
3 substantial agreement as to the principal factual elements underlying a specified offense."
4 *United States v. Ferris*, 719 F.2d 1405, 1407 (9th Cir.1983). "In the ordinary case, a general
5 instruction that the verdict must be unanimous is sufficient to protect the defendant's rights.
6 *United States v. Markov*, 13 F. App'x 736, 738 (9th Cir. 2001) (citing *United States v.*
7 *Anguiano*, 873 F.2d 1314, 1319 (9th Cir.1989)). When there is a "genuine possibility of juror
8 confusion," however, a specific unanimity instruction is required. *United States v. Echeverry*,
9 719 F.2d 974, 975 (9th Cir.1983). The Ninth Circuit has described three situations in which a
10 specific unanimity instruction should be given: (1) where the jury itself indicates its confusion;
11 (2) where the indictment is sufficiently broad and ambiguous as to present a danger of jury
12 confusion; and (3) where the evidence is sufficiently factually complicated as to indicate the
13 possibility of jury confusion. *United States v. Davalos*, 4 F. App'x 361, 363 (9th Cir. 2001)
14 (citing *Anguiano*, 873 F.2d at 1319-20).

15 Mr. Pigida cites *United States v. Gordon*, 844 F.2d 1397 (9th Cir. 1988). In *Gordon*, the
16 Ninth Circuit instructs that to determine whether a count charged one or two conspiracies,
17 courts look at "whether there was one overall agreement among the various parties to perform
18 various functions in order to carry out the objectives of the conspiracy." *Id.* at 1401 (quotations
19 and citations omitted). The relevant factors in determining the existence of such an "overall
20 agreement" are the nature of the scheme, the identity of the participants, the quality, frequency
21 and duration of each conspirator's transactions, and the commonality of times and goals. *Id.*
22 (citing *United States v. Arbelaez*, 719 F.2d 1453, 1457 (9th Cir.1983), *cert. denied sub nom.*
23 *Ponce de Leon v. United States*, 467 U.S. 1255, 104 S.Ct. 3543, 82 L.Ed.2d 847 (1984)).
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1 Here, the Court finds that in looking at these factors Count I charged a single
2 conspiracy—a conspiracy between Mr. Pigida and Marina Bondarenko to surreptitiously divert
3 funds from the business Trend Sound Promoters. *See United States v. Ferris*, 719 F.2d 1405
4 (9th Cir.1983) (a general unanimity instruction suffices when a case involving multiple acts
5 within one count of an indictment is sufficiently clear in its presentation so that unanimity can
6 be presumed); *United States v. Friedman*, 445 F.2d 1076 (9th Cir.1971) (the jury must be
7 presumed to have followed the unanimity instruction and all agreed to at least one of several
8 possible conspiracies even though no specific instruction was given to that effect); *Vitello v.*
9 *United States*, 425 F.2d 416 (9th Cir.1970). The Court clearly instructed the jury that to find
10 Mr. Pigida guilty of conspiracy, the government must prove each of the following elements
11 beyond reasonable doubt:
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14 First, beginning no later than January 2012, and continuing until in or about December
15 2017, there was an agreement between two or more persons to commit at least one
16 crime as charged in the indictment; second, the defendant became a member of the
17 conspiracy knowing of at least one of its objects and intending to help accomplish it;
and, third, one of the members of the conspiracy performed at least one overt act on or
after November 29, 2013.

18 Dkt. #248 (Official Transcript of Jury Trial – Day 9 held on 11/29/2022) at 1259:1–9. The
19 indictment clearly laid out the overt acts underlying the conspiracy charge. Dkt. #1 at 25–27.
20 And the Court clearly instructed the jury that their verdicts must be unanimous. *See* Dkt. #248
21 at 1269:25 – 1270:1, 1270:8–9, 1273:1–5, 1273:7–10. Further, the jury’s verdict indicates that
22 the jury was unanimous in agreeing on *every* specific object of the conspiracy. In Counts 2–11
23 and 13–17 the jury found Mr. Pigida guilty of wire fraud, in Counts 18 – 21 the jury found Mr.
24 Pigida guilty of mail fraud, and in Count 22 the jury found Mr. Pigida guilty of bankruptcy
25 fraud. Dkt. #227 at 1–8. The Court does not agree with Mr. Pigida that the jury could have
26 unanimously found him guilty of conspiracy, yet not have unanimously agreed on what the
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1 conspiracy was, or that the evidence in this case was sufficiently factually complicated as to
2 indicate the possibility of jury confusion. The Court, therefore, does not find it erred in
3 refusing to give a specific unanimity instruction.

4 Second, Mr. Pigida argues that the Court erred in failing to give the jury a multiple
5 conspiracies instruction. A defendant is entitled to a multiple conspiracies instruction only if
6 the defendant's theory of multiple conspiracies is supported by law and has some foundation in
7 the evidence. *Anguiano*, 873 F.2d at 1317 (citations and quotation marks omitted). Failure to
8 give a multiple conspiracies instruction "is error only if the instructions as a whole, considered
9 in the context of the entire trial, did not fairly and adequately cover the issues." *Id.* "Thus, the
10 overall adequacy of the instructions is reviewed in light of the entire charge in the context of
11 the whole trial, and so long as the instructions fairly and adequately cover the issues presented,
12 the judge's formulation of those instructions or choice of language is a matter of discretion."
13 *Id.* (citations and quotation marks omitted). Accordingly, "it is not error to reject a multiple
14 conspiracies instruction if the other instructions, when viewed in their entirety, cover that
15 theory." *Id.* (citation omitted).

16 As explained earlier, the Court does not find that Count I charged multiple conspiracies
17 per *Gordon*, 844 F.2d 1397. And, as explained earlier, the jury found Mr. Pigida guilty of each
18 and every object of the conspiracy charge at the end of trial. As such, the Court finds it did not
19 err in refusing to give a multiple conspiracies instruction.

20 **B. Ineffective Assistance of Counsel**

21 Mr. Pigida's third and fourth bases for his Motion allege ineffective assistance of
22 counsel. He specifically argues that trial counsel was ineffective for the following reasons: trial
23 counsel (1) failed to present evidence concerning the potentially successful nature of the
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1 Defendant's business, in that Trend Sound Promoters was developing a relationship with
2 advertisers through the affiliate marketing program and that this relationship was destroyed by
3 hacking and unfavorable publicity; and (2) failed to request theory of defense instructions,
4 arguing there was evidence to support the defense that Mr. Pigida acted on the advice of
5 counsel. Dkt. #263 at 5–18.

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7 To succeed on a claim of ineffective assistance of counsel, Mr. Pigida must satisfy a
8 two-part test: he must show that (1) "counsel's representation fell below an objective standard
9 of reasonableness"; and (2) that counsel's deficient representation was "prejudicial to the
10 defense." *Strickland v. Washington*, 466 U.S. 668, 688, 692 (1984). "No particular set of
11 detailed rules for counsel's conduct can satisfactorily take account of the variety of
12 circumstances faced by defense counsel or the range of legitimate decisions regarding how best
13 to represent a criminal defendant." *Id.* at 689. Mr. Pigida has the burden of establishing that
14 his "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose
15 result is reliable" to show that his counsels' unprofessional errors actually prejudiced his
16 defense. *Id.* Given the "tempt[ation] for a defendant to second-guess counsel's assistance after
17 conviction," a court "must be highly deferential" and resist using the benefit of hindsight to
18 judge counsel's decisions. *Id.* Thus, Mr. Pigida bears the burden to "overcome the presumption
19 that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.*
20 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). "The failure to raise a meritless
21 legal argument does not constitute ineffective assistance of counsel." *Baumann v. United*
22 *States*, 692 F.2d 565, 572 (9th Cir. 1982).

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26 The Court finds that Mr. Pigida has failed to introduce any evidence which would
27 support a claim that counsel assisted in a manner below the objective standard of
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1 reasonableness resulting in prejudicial defense. On the contrary, Mr. Pigida's contentions are
2 purely speculative and based on allegations which are unfounded in demonstrated fact. This
3 Court is bound by *Strickland* to be highly deferential to the strategies employed by counsel.
4 Mr. Pigida has not overcome his burden in substantiating ineffective assistance of counsel.

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6 **IV. CONCLUSION**

7 The Court having considered Mr. Pigida's Motion, and the remainder of the record,
8 hereby finds and ORDERS Mr. Pigida's Motion for a New Trial (Dkt. #263) is DENIED.

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10 DATED this 11th day of July, 2023.

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14 RICARDO S. MARTINEZ
15 UNITED STATES DISTRICT JUDGE
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